uncommon misunderstanding of the above distinction is shown by the Supreme Court of California in Esrey v. S. P. Co.,[3] where it holds that a defendant's failure to exercise ordinary care, under the circumstances of situation 7 (a) above "amounts to a degree of reckless conduct that may be termed wilful and wanton," and therefore contributory negligence upon the part of the person injured is not an element which will defeat a recovery. It may amount to that, it is true, but to say it always does, is to eliminate the necessity of the doctrine of the defendant's last clear chance altogether, as well as to negative impliedly the principle of the doctrine, viz., that under such circumstances a recovery is permitted even though the defendant was guilty merely of negligence. When the defendant's misconduct amounts to wantonneses and wilfulness, the situation has gone on beyond the field of the doctrine of the defendant's last clear chance.

In the situation classified above as 7 (b) i. e., where the defendant does not discover the plaintiff's danger in time, by the use of ordinary care, to avoid injuring him, the doctrine of the defendant's last clear chance is, as the principal case holds, and according to the great weight of authority, not applicable. Whether the defendant could have discovered the plaintiff's danger by the use of reasonable and ordinary care, etc., are merely circumstances which show whether such failure to discover was due to negligence or to wantonness or wilfulness.[4]

As to the eighth situation, the plaintiff's conduct being wanton or wilful deprives him of any civil action.

The writer's conclusion, therefore, is that the doctrine of the defendant's last clear chance is confined to the situation where: (a) the plaintiff's negligence is not continuing down to the time of the injury, but is an antecedent negligence which has placed him in a position of danger of being injured by the defendant; (b) the defendant discovers the plaintiff's dangerous position in time, by the use of ordinary care, to avoid injuring him; (c) the defendant's failure to avoid injuring the plaintiff is due to negligence and not to wantonness or wilfulness.

H. S. D. C.

Parent and Child: Legitimation Through Acts: Definition of "Family".—In 1793, Cambaceres, the founder of the modern civil law of France, secured the adoption of a law by the National Assembly placing illegitimate children upon the same basis as legitimate children with reference to succession to the property of their parents.[1] This law was doubtless too radical, and did not, therefore, long endure; but it served as a basis of a new policy towards such children. After many

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[3] (1894) 103 Cal. 541.

[4] See note, 21 L. R. A. (N. S.) 427.

[1] Laferriere, Histoire du Droit Francaise, Vol. II, p. 224; Esmein, Histoire du Droit Francaise de 1789 a 1814, 235-238.

changes, it was supplanted by the provisions of the Code Napoleon, which in turn has served as a model to many subsequent legislators.[2]

Roughly speaking, the first statute on the subject in California, followed the principles of the Code Napoleon. A written acknowledgement before a witness, (not necessarily a notary, as under the French law), or the subsequent marriage of the parents, legitimated natural children.[3] In 1870, the Legislature adopted a statute upon the subject, which in liberality approaches the French revolutionary statute above referred to. By that statute, the legitimation of a natural child could be effected by a mere written declaration, without witnesses, or by "treating, receiving or acknowledging him publicly" as legitimate.[4] But this extremely liberal statute was the law for less than three years. Sections 230 and 1387 of the Civil Code restricted to some extent the power of legitimation. The requirement of a witness in the case of a written acknowledgment was restored, and the power of legitimation given to either parent was restricted to the father under Section 230. That section provides that the father may legitimate a natural child by public acknowledgment, receiving it into his family, and otherwise treating it as if it were legitimate. With respect to the mother of an illegitimate child, the law of California has maintained the view of Cambaceres, for sixty-three years, and yet society still subsists.[5]

The history of the judicial interpretation of these statutes throws an interesting light upon changing views of social institutions. Before the Codes, the Supreme Court thought that these statutes, "being in derogation of the common law," ought to be strictly construed. Where a man recognized his illegitimate child as his daughter by an instrument executed in all respects as required by statute, it was held not to be a sufficient acknowledgment, because it was executed as a will and not as a technical instrument of acknowledgment.[6] The Codes destroyed the "derogation of the common law" argument by commanding a liberal construction, but notwithstanding this fact, in one very important case, a majority of the court set up a very strict standard as to what constituted public acknowledgment, and held that there could be no public acknowledgment where the father denied the relationship to his own kindred, although he usually recognized the child as his own.[7]

The clause with reference to reception into the family has, however, had the most interesting history. Section 230 might have been interpreted as providing alternative methods of legitimation,—1, by public acknowledgment, 2, by reception into the father's family, and 3,

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[2] French Civil Code (Annotated), by Blackwood Wright, Secs. 331-342.

[3] Statutes, 1850, p. 219.

[4] Supplement to Statutes, 1869-1870, p. 530.

[5] Statutes, 1850, p. 219.

[6] Pina v. Peck, (1866) 31 Cal. 359.

[7] Estate of Jessup, (1889) 81 Cal. 408, 21 Pac. 976, 22 Pac. 742, 1028.

by otherwise treating the child as legitimate. In view of the act of 1870, it can hardly be doubted that this would be the natural meaning of the section. But the reception into the family has been held by the Courts to be one of the essential steps in this kind of legitimation. If the father has no family, or no "home," (which seems to be used as a synonym for family) he cannot legitimate his child in this informal way, "Having a family, or at least a home, in which he can receive him is one of the cardinal conditions prescribed for such adoption."[8] If he has a home, though it consists of himself and a woman, (not the child's mother), with whom he is living in meretricious relations, he must take the child into that home, if even for a week or a day.[9] These narrow and unjust results would have been avoided by a liberal construction of this beneficial statute.

In the Estate of Jones,[10] which is very much like the earlier case of Estate of Gird,[11] the present Supreme Court shows a laudable tendency to avoid the results of the strict construction of the section by the earlier decisions. A father of an illegitimate child, who had frequently acknowledged it to be his, invited the child, its mother and her husband to visit him for the benefit of the child's health at his mountain ranch, where he usually lived alone or with a hired man to do his housework. They went and stayed two months. This was held to be reception into his family. "The section requires nothing more in this respect than that the father should have a fixed habitation, constituting his home, which, if he takes the child to live with him there, would be the home of such family, although the family may then consist of but the two persons."[12]

O. K. M.

Patents: Right of Patentee to Restrict Sale and Use of Patented Article.—That a resale price restriction, made by a patentee in the sale of his patented article, was valid and enforcible, was the holding of a long line of decisions by the lower Federal Courts.[1] In the Dick "mimeograph" case,[2] the Supreme Court of the United States sustained the validity of a seemingly greater regulation by the patentee, namely, the right to designate the articles or materials which might be used in connection with his patented machine. It was

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[8] Estate of De Laveaga, (1904) 142 Cal. 158, 75 Pac. 790. In the earlier cases of Jessup, supra, and Blythe v. Ayres (1892) 96 Cal. 532, 31 Pac. 915, 19 L. R. A. 110, the language of the Court was to the effect that the reception in the family was not required where the father had no family.

[9] Garner v. Judd (1902) 136 Cal. 394, 68 Pac. 1026.

[10] Estate of Jones, (Aug. 27, 1913) 46 Cal. Dec. 208.

[11] Estate of Gird, (1910) 157 Cal. 542, 108 Pac. 499.

[12] 46 Cal. Dec. 213.

[1] E. g., New Jersey Patent Co. v. Schaefer, (1906) 144 Fed. 437; The Fair v. Dover Mfg. Co., (1908) 166 Fed. 117; Automatic Pencil Sharpener Co. v. Goldsmith Bros., (1911) 190 Fed. 205; 25 Harvard Law Review 454.